

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASMIN JETTA TAPIA,
Petitioner,

v.

HOWARD C. BARRON, et al.
Respondents.

Case No.: 23-cv-1531-BJR-BAT

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DENYING
WITHOUT PREJUDICE PETITION FOR
HABEAS RELIEF

I. INTRODUCTION

Currently before the Court is the Report and Recommendation of United States Magistrate Judge Tsuchida recommending that this Court deny and dismiss Petitioner's request for habeas relief without prejudice. Having reviewed the Report and Recommendation, Petitioner's objections thereto, the record of the case, and the relevant legal authority, the Court will adopt the Report and Recommendation and deny and dismiss Petitioner's request for habeas relief without prejudice. The reasoning for the Court's decision follows.

II. DISCUSSION

Petitioner Jamin Jetta Tapia filed this *pro se* 28 U.S.C. § 2241 federal habeas corpus petition arguing that the Bureau of Prisons ("BOP") has impermissibly disqualified her from

1 accruing First Step Act (“FSA”) earned time credits (“ETC”) and requesting that this Court order
2 the BOP to immediately apply the ETC to reduce her federal criminal sentence. The BOP
3 counters that it did categorize Petitioner as eligible and she has potentially earned 140 days of
4 credit; however, she does not yet qualify to have the credit applied to her sentence due to her risk
5 assessment level. The BOP also claims that Petitioner failed to exhaust her administrative
6 remedies and that her request for relief is not yet ripe because her release date is years in the
7 future. Lastly, the BOP urges this Court to dismiss the petition for lack of jurisdiction because
8 Petitioner was recently transferred to a federal detention facility in Florida.

9 The Report and Recommendation concludes that this Court does have jurisdiction and
10 that transferring this matter to a federal court in Florida would not be in the interest of justice
11 because the habeas petition should be denied and dismissed without prejudice as it is not yet ripe.
12 As stated above, Petitioner requests that this Court require the BOP to credit her for ETC credits.
13 However, ETC credits are based on the successful completion of recidivism reduction
14 programing, something that Petitioner has not yet completed. The Report and Recommendation
15 notes that “Petitioner’s [ETC] credits could accelerate, decelerate, or even be lost depending on a
16 variety of circumstances, such as opting out of programming, or violating certain rules and
17 requirements. ... Given this fact and the fact Petitioner’s risk levels and earned ETC could go up
18 or down and given the fact her release date is years in the future, the immediate application of
19 ETC credits under the FSA is not ripe.” Dkt. No. 12 at 8.

20 Petitioner filed objections to the Report and Recommendation. Dkt. No. 15. However, the
21 objections fail to address the basis on which the Report recommends that this Court dismiss the
22 petition, namely that the petition is not ripe because it is too soon to apply the ETC credits to her
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1 sentence. Instead, Petitioner claims to have exhausted her administrative remedies, an argument
2 that is not relevant to the Report’s recommendation of dismissal.

3 The Court agrees that the petition is not yet ripe and, as such, must be dismissed. *See*
4 *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric.*
5 *Prods. Co.*, 473 U.S. 568, 580-81 (1985) (internal quotation marks omitted)) (“A claim is not
6 ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or
7 indeed may not occur at all.”).

8 Petitioner also requests for the first time in her objections that this Court appoint an
9 attorney to represent her in this matter. Under 18 U.S.C. § 3006A(2)(B), a district court may
10 appoint counsel for a petitioner if “the interests of justice so require” and the petitioner is
11 “financially eligible.” However, “[i]ndigent state prisoners applying for habeas corpus relief are
12 not entitled to appointed counsel unless the circumstances of a particular case indicate that
13 appointed counsel is necessary to prevent due process violations.” *Chaney v. Lewis*, 801 F.2d
14 1191, 1196 (9th Cir. 1986). In deciding whether to appoint counsel, the court must evaluate the
15 petitioner’s likelihood of success on the merits as well as the ability of the petitioner to articulate
16 her claims without counsel, considering the complexity of the legal issue involved. *Sharp v.*
17 *Koenig*, 2020 WL 756642, *2 (E.D. Cal. Feb. 14, 2020). This Court concludes that the interests
18 of justice do not require the appointment of counsel in this case as this Court has already
19 determined that the petition is not yet ripe and therefore must be dismissed.


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For the foregoing reasons, the Court HEREBY ADOPTS the Report and Recommendation and DENIES and DISMISSES without prejudice Petitioner's request for habeas relief.


Barbara Jacobs Rothstein
U.S. District Court Judge